

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

BATTELLE ENERGY ALLIANCE, LLC,

Employer/Petitioner

and

Case 27-UC-218

UNITED STEEL WORKERS INTERNATIONAL
UNION, LOCAL 8-0652,

Union.

REGIONAL DIRECTOR'S DECISION AND ORDER

This case arises in response to the United States Department of Energy (DOE) changing the mission and operation of its Idaho National Laboratory (INL) complex (previously called the Idaho National Environmental and Engineering Laboratory (INEEL)) in eastern Idaho. As part of those organizational and mission-related changes, the DOE awarded a contract to Battelle Energy Alliance, LLC, (Employer or BEA), effective February 1, 2005, to perform certain work previously performed by multiple contractors, with the directive to more fully integrate certain functions and operations at INL. In this process, established collective bargaining units of two of those previous contractors were assumed by the Employer, and the Employer now seeks to combine, through accretion, these historically separate units into a single collective bargaining unit.

Specifically, the Employer seeks to combine the former Argonne National Laboratory maintenance and material handling employees represented by United Steel

Workers International Union (the Union),¹ with the former Bechtel BWXT Idaho, LLC, operations and maintenance employees, telephone operators, medical division employees, radiation control “RADCON” technicians, and vehicle repair employees also represented by the Union. The Union opposes combining the employees covered by the separate collective-bargaining agreements into one unit.

I have considered the evidence and the arguments presented by the parties and have concluded that it is inappropriate at this time to clarify the existing collective bargaining units into a single unit. Accordingly, the Employer’s unit clarification petition is dismissed.

To provide a context for my discussion of the issues, I will provide a statement of the current case; an historical overview of operations at INL; the transition from the former contractors to BEA; BEA’s organizational structure; the bargaining history involving the former Argonne and Bechtel units; the bargaining history preceding filing of the instant unit clarification petition; and my analysis of the facts and relevant case authority to support my decision.

STATEMENT OF THE CASE

As a result of the issues raised by the Employer’s unit clarification petition filed on July 20, 2005, under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on September 7 and 8, 2005, in Idaho Falls, Idaho, before Barbara D. Josserand, a hearing officer for the National Labor Relations Board. Pursuant to the

¹ Prior to March 2005, the employees at issue herein were represented by Paper, Allied-Industrial, Chemical & Energy Workers International Union, AFL-CIO, CLC, Local No. 8-0652 (PACE). PACE merged with United Steel Workers of America to become United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO-CLC, Local 8-0652. The newly formed labor organization operates under the shortened name: United Steel Workers International Union. This merger had no effect on the prior Argonne and Bechtel bargaining units.

provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I make the following findings:

1. **Hearing and Procedures:** The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. **Jurisdiction:** The Employer, Battelle Energy Alliance, LLC., is engaged in contract work for the United States Navy and the United States Department of Energy at the Idaho National Laboratory (INL) site located west of Idaho Falls, Idaho. Annually, the Employer receives in excess of \$1,000,000 for its services, which have a substantial impact on the national defense of the United States of America, and during the same time period, purchases and receives at the INL facilities, goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Idaho. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. **Claim of Representation:** The labor organization involved, United Steel Workers International Union, is a labor organization within the meaning of the Act. The parties are in agreement that this labor organization represents certain employees of the Employer.

4. **Statutory Question:** Based upon the record herein, no clarification of the former Argonne and Bechtel unit employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act is warranted.

HISTORICAL OVERVIEW OF THE IDAHO NATIONAL LABORATORY

The INL is a 900 square-mile site located west of Idaho Falls, Idaho, owned by the United States government. It came into existence over fifty years ago as a gun range for the Navy to realign and test 16-inch battleship guns which were manufactured in Pocatello, Idaho. With the development of nuclear energy in the 1950s for both military and domestic purposes, the site became the first nuclear development and test facility for the Nautilus, which was the first nuclear powered submarine. During its history, the site has housed over 50 nuclear reactors used to develop and test nuclear technology resulting in the current generation of light water reactors used around the world. Because the United States ceased building nuclear power plants about 30 years ago, the demand for testing waned, so the focus of the site shifted to clean up of the aging facilities at the site. The site also became the repository for the Three Mile Island reactor and for disposal of nuclear waste from other locations, including Rocky Flats, Colorado. Most recently, the site has been used for preparing spent fuels for permanent storage and reprocessing usable fuel for new use.

Three years ago, DOE decided to refocus the mission of the site to be the center for resurgence of nuclear energy, including building prototype nuclear power plants, and performing advance research into fuel reprocessing and fourth generation nuclear reactors. At that time, the name was changed from Idaho National Environmental and Engineering Laboratories (INEEL), to Idaho National Laboratories (INL), and DOE began the process of putting the future work up for bid. This process culminated in two former contracts being cancelled and three new contracts being awarded as described immediately below.

TRANSITION FROM THE FORMER CONTRACTORS TO BEA

A. BEA operations

INL consists of several distinct complexes at the actual site, and a large office and research complex in the city of Idaho Falls. On February 1, 2005, BEA assumed operational authority for three of the complexes at the site and the newly named Idaho Falls science and technology complex, which is located about 35 miles from the eastern edge of INL, in the city of Idaho Falls. BEA also has overall site responsibility for security and firefighting. These four complexes are under the control of DOE whose primary goal is to promote private sector involvement in research and development. Other complexes at INL are utilized by the Department of Defense (DOD) and the Department of Homeland Security (DHS). While BEA has some involvement in the DOD and DHS areas of the site, those areas are not at issue herein.

The DOE contract was awarded to BEA in November 2004, and, after a three-month transition period, BEA assumed operations formally on February 1, 2005. This research and management contract was designed to change the mission of the former INEEL to a primary mission of being the lead laboratory for the resurgence of nuclear energy in the nation and a secondary mission of being a general purpose laboratory for defense and homeland security. The DOE contract describes this mission as:

To enhance the Nation's energy security by becoming the preeminent, internationally-recognized nuclear energy research, development, and demonstration laboratory within ten years. The INL will also establish itself as a major center for national security technology development and demonstration. This requires the INL be a multi-program National Laboratory with world-class nuclear capabilities. The INL will foster new academic, industry, government, and international collaborations to

produce the investment, programs, and expertise that assure this vision is realized.

Simultaneously, a second contract was awarded to a conglomerate called CH2M-WGI² Idaho, LLC, (CWI). This seven-year contract is for clean up of various complexes at the site which are no longer in use. Those locations will either be abandoned long term, or used for as yet unknown operations. A third contract was also awarded to Bechtel, which took over the contract for operation of the mixed waste treatment plant formerly held by British Nuclear Fuels Company. These later two contracts took effect May 1, 2005.

The newly-awarded contracts had the effect of combining all of the former represented and unrepresented Argonne employees and about half of the former represented and unrepresented Bechtel employees under BEA for the research and management contract. The majority of the remaining Bechtel employees became employed by CWI for the seven-year clean up contract. Bechtel also retained some of its former employees, although the record is unclear as to how many. The effect on the represented employees at issue herein was that all 57 former Argonne represented employees were hired by BEA. The former Bechtel represented employees were severed into two groups, with approximately 250 being hired by BEA, and approximately 620 being hired by CWI.

The DOE contract implementation consists of three phases. The transition phase ran from November 2004, when the contract was awarded, until February 1, 2005, when BEA assumed control. This included recruiting and hiring of former Argonne and Bechtel employees; integrating the separate personnel, payroll, and safety

² WGI stands for Washington Group International.

programs; executing site service and tenant agreements; hiring, training, and relocation of the new management team; preparing the facilities and programs for transfer; and executing the transfer agreements, permits, and subcontracts.

The consolidation phase ran from February 1 until October, 2005. This second phase included redesigning the former Argonne and Bechtel benefit systems and consolidating, rewriting or “sunsetting” all existing Bechtel and Argonne policies and procedures, computer systems, and programs. Some of the rewriting and sunsetting process had not been completed as of the hearing, but the uncontroverted evidence establishes that it will be completed no later than summer 2006. The Union is involved in this process and is participating on some of the committees charged with these responsibilities. (During the consolidation phase, BEA also integrated the formerly separate security guard forces from Argonne and Bechtel, resulting in a merger of two separate guard bargaining units.) The consolidation phase also included integrating the two separate safety management processes from Argonne and Bechtel and writing a ten-year operational plan. The final phase will involve execution of the ten-year plan which must be submitted to DOE for approval by December 15, 2005, and may, at the discretion of DOE, be extended for five years, through September 30, 2019.

B. The facilities

The INL site includes a number of geographically distinct complexes, including several that are not at issue herein, but which were discussed at the hearing because of their historical significance to the units at issue herein. In particular, there were many references made to Test Area North (TAN) and the Naval Reactors Facility (NRF),

which are primarily under the control of other contractors.³ The four complexes controlled by BEA under the new DOE contract which are at issue are the Idaho Falls science and technology complex, and three specific complexes at INL: Central Facilities Area, Reactor Technology Complex, and the Material Fuels Complex.

1. Idaho Falls science and technology complex

The Idaho Falls science and technology complex is located in the city of Idaho Falls. It consists of the major management facilities for INL and research laboratory facilities. Under the BEA contract, there is a greater emphasis on work at the laboratories housed in the science and technology complex. Because it involves private land, there is greater flexibility in utilizing the private funding anticipated under the new mission. There are about 21 former Bechtel represented employees currently working at this complex in Idaho Falls.

2. Central Facilities Area (CFA)

CFA houses the main fire department, main dispensary, bus transportation center, a variety of laboratories, and training and administrative offices. Skoville Station, which is the central power distribution plant for INL, is located adjacent to the CFA and considered part of the complex. There are about 114 former Bechtel represented employees currently working at CFA. Of these, approximately 45 are working in a newly-created maintenance facility. These maintenance employees were transferred to CFA from other INL complexes that had been operated by Bechtel under

³TAN consists of the facilities used by CWI in performance of its seven-year clean-up contract, and the Specific Manufacturing Capability (SMC) facility which is currently operated by BEA under a separate contract with DOD for the manufacture of Abrams tank armor for the Army. BEA does not employ any formerly represented employees at the SMC. The NRF has been in existence since about 1949 and is operated by Bechtel Bettis pursuant to a contract with DOD. NRF was the subject of a unit clarification petition in Case No. 27-UC-215, which is unrelated to the current unit clarification petition. There are no former unit employees working at the NRF complex.

its DOE contract, but are not a part of BEA's operations under the newly awarded DOE contract.

3. Reactor Technology Complex (RTC)⁴

The RTC is a self-contained facility consisting of multiple buildings which house two test reactors, and engineering and administrative offices and laboratories. RTC has its own infrastructure, including power support structures, warehousing, waste processing, and water supply facilities. It also has its own cafeteria. RTC is the center for radiation testing for materials and fuels for both the Navy and DOE. It is currently the principal government facility for development of the next generation of nuclear reactors for both public and private use. There are about 115 former Bechtel represented employees currently working at RTC.

4. Materials and Fuels Complex (MFC)

The MFC was formerly referred to as "Argonne West or ANL-West." For about fifty years, MFC was the western field operation for Argonne National Laboratory, which is headquartered in Chicago, Illinois. Argonne operated the MFC pursuant to a contract with the University of Chicago. MFC consists of a series of research facilities and reactors, including an experimental breeder reactor and a zero power reactor. The primary research at MFC involves specialized separation of radioactive and other fuel materials used in the design of fuel configurations for nuclear reactors. MFC also houses facilities for assembly of so-called "space batteries" for NASA's up-coming mission to Pluto. There are about 57 former Argonne represented employees currently working at MFC.

⁴ Under a previous contractor this was referred to as Test Reactor Area (TRA) and still appears under that designation on some INL documents.

BARGAINING HISTORY INVOLVING FORMER BECHTEL AND ARGONNE UNITS

The Employer filed this Unit Clarification petition with the stated purpose of seeking to combine the former Bechtel and Argonne represented employees into a new unit including: all maintenance, material handling, operating, operations, experimental machine shop, telephone operators, medical division, radiation control technicians, and vehicle repair employees who are represented by the Union and perform work at BEA's existing INL facilities; excluding all confidential, administrative, professional, office, and clerical employees, guards, and supervisors, as defined by the Act.

While the proposed unit description purports to include "all" employees in the named classifications, the evidence establishes that the Employer really intends for the new unit to comprise only the employees in those classifications who were previously represented under the former Bechtel and Argonne bargaining agreements. Thus, the Employer is explicitly not seeking to include certain operators, maintenance employees, and RADCON technicians who were historically unrepresented under Argonne's operations.

The recognition language in the Bechtel and Argonne collective-bargaining agreements establish that over a period of many years, various bargaining units were voluntarily recognized by those employers or certified as the result of Region 19 and Region 27 representation case proceedings. Because the parties have represented at the hearing and on brief that there is only a single Bechtel bargaining unit and a single Argonne bargaining unit, this decision is premised on that understanding.⁵

⁵ While the parties referred to the employees represented under the Bechtel and Argonne collective bargaining agreements as "the main (or Bechtel) unit" and "the Argonne unit," and treated the respective collective bargaining agreements as if the various separately certified or recognized units had been merged into two units, the language in the two collective bargaining agreements suggests otherwise.

A. Bechtel units

The most recent collective bargaining agreement between Bechtel and the Union was in effect by its terms from June 1, 2003 through September 30, 2004. Bechtel and the Union agreed to an extension through May 5, 2005, because of the impending new DOE contract awards. In January 2005, the Union and BEA entered into a Memorandum of Understanding, which stated in pertinent part that BEA and the Union: “will recognize the terms and conditions of the collective bargaining agreement applicable to the INEEL as negotiated by [the Union and Bechtel] effective June 1, 2003, and which will continue until September 30, 2005, unless otherwise changed or extended through negotiations.” BEA and the Union have subsequently agreed to a one-month extension through October 31, 2005.⁶ Article 1 of that collective bargaining agreement sets forth the following recognition language:

The Company recognizes the Union as the exclusive collective bargaining agent with respect to wages, hours, and working conditions for the employees in the following described bargaining units at the Department of Energy (DOE) Project near Arco, Idaho:

Operations and Maintenance. Operations and Maintenance employees at the IRC and associated buildings in Idaho Falls; internal moves in and between Company controlled facilities in Idaho Falls; base Freight runs as currently performed by OCAW; and onsite facilities with the responsibility and jurisdiction of the Company.

Thus, the “Bechtel unit” may actually be 15 separate bargaining units covered under one collective-bargaining agreement. Similarly, “the Argonne unit” appears to actually be two separate bargaining units covered by one collective bargaining agreement. There is no direct evidence in the record that former parties agreed through bargaining to permanently combine the separately certified or recognized units into single Bechtel and Argonne units, despite the fact that BEA and the Union refer to them as single units, nor is there any evidence that BEA recognized them as single units. Rather, BEA appears to have assumed the contracts containing the separate unit identities through the below described memoranda of understandings.

⁶ Counsel for the Union alluded to an additional extension in his closing statement, but there is no record evidence to establish whether such an addition extension has been agreed to.

- a. All operating and maintenance employees of the employer at its Idaho Chemical Processing Plant, including Analytical Control Laboratory employees at the Chemical Processing Plant, (NLRB Order of February 19, 1954, in Case No. 19-RC-1399.)
- b. The SWEEP Operators (NLRB, Case No. 27-RC-7480, voluntarily recognized on June 20, 1994).
- c. Experimental Machine Shop Employees. All Experimental Machine Shop employees at the Test Reactor Area [now RTC] at the employer's facilities at the INEEL (formerly Idaho National Engineering Laboratory (INEL) near Arco, Idaho (NLRB, Case No. 19-RC-2551).
- d. Dosimetry Technicians. The Company recognizes the Union as the exclusive collective bargaining agent with respect to wages, hours, and working conditions for Dosimetry Technicians located in the Dosimetry laboratory located at the Central Facility area t the INEEL as contained in the NLRB Order of August 22, 2003, Case No. 27-RC-8264.

Telephone Operators. All Telephone Operators at the employer's INEEL near Arco, Idaho, and the Idaho Falls, Idaho, switchboard operation, including part-time Operators, (NLRB, Case No. 19-RC-1911).

Printing and Reproduction Machine Operators. All printing and reproduction machine operators in the Scientific and Technical Information Services (STIS) Department (formerly Technical Publications) at the employer's INEEL near Arco, Idaho, and at the Idaho Falls, Idaho Printing and Reproduction Ship operations, (NLRB, case No. 19-RC-2055).

- a. All employees employed by the employer in the STIS Copy Centers at the INEEL Site near Arco, Idaho, and in Idaho Falls, Idaho, (NLRB, Case No, 19-RC-9216).

Cafeteria Employees. All cafeteria employees employed by the Company at the INEEL Site near Arco, Idaho, including part-time cafeteria employees, (NLRB, Case No. 19-RC-3620).

Mail Clerk Employees. All Mail Clerks employed by the Company in connection with its operation at the INEEL, Scoville, Idaho, and the Company facilities in Idaho Falls, (NLRB, Case No. 19-RC-4954).

Photo/Video/Image Processing and Micrographic Employees. All employees in the Company Photo/Video/Image Processing and Micrographics Units of the INEEL, near Arco, Idaho, and in Idaho Falls, Idaho, (NLRB, Case No. 19-RC-7100).

Medical Division Employees, All Nurses, Medical Technologists, X-Ray Technologists, and LPN Examining Technologists employed by the Company, within the INEEL Occupational Medical Program (formerly INEL Health and Occupational medical) at its facilities located at the DOE INEEL site near Arco, Idaho, and in Idaho Falls, Idaho, (NLRB, Case No. 19-RC-9592).

Radiation Control Technicians. All health Physics Technicians employed by the Company at its Idaho Chemical Processing Plant at the INEEL near Idaho Falls, Idaho. (NLRB, Case No. 19-RC-6950).

a. All Radiation Control Technicians as certified by the NLRB, January 23, Case No. 27-RC-7515.

Decontamination Technicians. All Decontamination Technicians employed by the Company at its Idaho Chemical Processing Plant at the INEEL near Idaho Falls, Idaho (Case No. 19-RC-7013 voluntarily recognized on March 12, 1974)

Clothing Issue Technicians. All Clothing Issue Technicians employed by the employer at its Idaho Chemical Processing Plant at the INEEL near Idaho Falls, Idaho (NLRB order of May 27, 1977, in Case No 19-RC-8374).

Vehicle Repair. All Vehicle Repair employees classified as Vehicle Repair Specialists and Vehicle Repair Specialist helpers in the Company Fleet Operations (formerly Fleet Management) area at the INEEL, (NLRB, Case No. 27-RC-7080).

Exclusions. The following employees are excluded from the units described in 1.1: Confidential, administrative, professional (excluding those Medical Division employees included within NLRB Case No. 19-RC-9592), office clerical employees, guards and supervisors, as defined by the Act.⁷

B. Argonne unit

The most recent collective bargaining agreement between Argonne and the Union is in effect by its terms from June 1, 2002, through midnight May 31, 2007. That

⁷ The record does not clearly establish which classifications no longer exist under BEA's operations, but it appears that the SWEEP operators; dosimetry technicians; printing and reproduction employees; cafeteria employees; mail clerks; photo/video/image processing and micrographic employees; decontamination technicians; and clothing issue technicians are not part of BEA's new operations as there is no direct testimony involving them and these classifications are not listed on any exhibits establishing which employees and classifications comprise BEA's current complement of represented employees.

contract provided for a wage reopener effective June 1, 2005. On January 13, 2005, the Union and BEA entered into a Memorandum of Understanding that is virtually identical to that agreed to for the Bechtel unit. It stated in pertinent part that BEA and the Union: “will recognize the terms and conditions of the collective bargaining agreement applicable to the INEEL as negotiated by [the Union and Argonne] effective June 1, 2002, and which will continue through May, 31, 2007, unless otherwise changed or extended through negotiations.” BEA and the Union subsequently held negotiations for the wage reopener. They reached agreement on June 22, 2005, providing for wage increases in the following job classifications: Operations Specialist, Maintenance Specialist, HEO⁸/Rigger, Equipment Operator, Maintenance Mechanic, Material Controller, Material Handler, Maintenance Helper, Material Helper, Laborer, and Custodian. Article 2 of the collective bargaining agreement sets forth the recognition language as follows:

The Laboratory recognizes the Union as the exclusive bargaining agent with respect to rates of pay, hours of work, working conditions and other conditions of employment for the following Argonne employees in Local 8-0652 certified by the NLRB.

All maintenance employees in the Plant Services Section of Argonne's facility at the INEEL near Idaho Falls, Idaho, excluding all technicians, supervisors, guards, clerical and professional employees as defined by the Act.

All material handling employees in the Supply Section of Argonne's facility at the INEEL near Idaho Falls, Idaho, excluding all clerical employees, technical employees, professional employees, guards and supervisors as defined in the Act.

⁸ Heavy equipment operator.

BEA ORGANIZATIONAL STRUCTURE

A. Management hierarchy

The president, CEO and laboratory director is John Grossenbacher. Reporting to him are the deputy for operations, Art Clark, and the deputy for next generation nuclear plant, a position that is currently open. These three individuals have ultimate responsibility for the 3,400 BEA employees. They report directly to DOE and to the board of managers of the parent companies comprising BEA. The Employer's organization is divided into three areas called Technical Organizations, Support Organizations, and Staff Functions. These three organizational areas will be described briefly immediately below. Greater detail about the managerial hierarchy regarding the represented employees at issue is contained in the "represented work" section below.

1. Technical Organizations

Technical organizations includes five departments headed by associate lab directors. These departments are science and technology,⁹ nuclear programs,¹⁰ National and Homeland Security,¹¹ specific manufacturing capability,¹² and nuclear operations. These associate lab directors and their respective organizations are responsible for recruiting research or support projects to bring money into INL, overseeing the programs brought in under their direction, and providing customer

⁹ Bill Rogers is the science and technology director and chief research officer. There are about 450 scientists under his direction performing research in areas of chemistry, physics, and other classical sciences. Most of these scientists work at the complex in Idaho Falls, but those who need access to high hazard facilities and radiological facilities work in laboratories at both MFC and RTC.

¹⁰ Jim Lake is the nuclear programs director. There are about 300 employees under his direction. These employees are principally the scientists and engineers doing research and design of nuclear energy applications, including designing reactors, fuels, and reprocessing methods.

¹¹ K.P. Ananth is the director over National and Homeland Security operations. There are about 250 employees under his direction performing research functions for DOD and DHS.

¹² Dave Kudsin is the director over specific manufacturing capability at TAN. The record does not indicate how many employees work under his direction.

support. Nuclear operations is the only one of these five departments with represented employees.

David Richardson is the director over nuclear operations. There are about 500 employees under Richardson's direction performing operations, maintenance, engineering, and support for the Naval nuclear propulsion program and for all 17 nuclear facilities housed at MFC and RTC. Richardson's oversight includes represented employees in the nuclear maintenance and ATR programs sub-departments within the nuclear operations department.

a. Nuclear maintenance

The nuclear maintenance department includes 6 MFC represented employees, 9 RTC machine shop employees, and approximately 35 RTC maintenance craft employees who report to David Ceci, nuclear maintenance manager.

b. ATR programs

ATR programs includes 19 Union represented process operators and 9 represented utility operators at RTC who report to John Dwight, manager of ATR programs.

2. Support Organizations

The Support Organizations department has various directors overseeing the business functions of BEA's operations. The sub-departments within Support Organizations include communications,¹³ and human resources and diversity programs,¹⁴ which do not have any represented employees. Also included in Support

¹³ John Lindsay is the director of communications. He has about 20 employees under his direction. These employees are responsible for public and media relations. They also publish internal communications, including Employer newspapers.

¹⁴ Sue Arnold is the human resources director. She has about 40 employees under her direction.

Organizations are the business management; environment, safety, health, and quality; and facilities and site services sub-departments, which do include represented employees.

a. Business management

The director of business management is Brian Sack. Reporting to him are the managers of information technologies, financial operations, supply chain management, and prime contract management. Contained within the information technologies department are nine sub-departments, including computer support and solutions. The 3 bargaining unit telephone operators who work in Idaho Falls are in the computer support and solutions department. Contained within the supply chain management department, is the property management group which includes the 6 represented material handling employees who work at MFC.

b. Environment, safety, health, and quality

Fran Williams is the director of environmental safety, health and quality. Under her control are about 24 represented RADCON technicians who work at RTC, CFA, and in Idaho Falls, and a similar number of unrepresented RADCON technicians who work at MFC.¹⁵ Williams also oversees the occupational medicine department which includes about 12 represented medical employees, including nurses and X-ray technicians.

c. Facilities and site services

Cal Azaki is the acting director of facility and site services. His predecessor,

¹⁵ The transcript states that Richardson testified that Fran Williams has 266 represented employees reporting to her. Exhibits and other testimony establish that this is likely a typographical error and that Williams has only about 24 RADCON technicians reporting to her. It appears likely that Richardson said or meant to say 26.

Juan Alvarez, was recently moved to a special assignment under the direction of Laboratory Director Grossenbacher. This department includes about 1,100 employees who secure and maintain the infrastructure of the laboratory. They also maintain the roads, grounds and non-nuclear buildings. There are about 126 bargaining unit employees assigned to facility and site services. These bargaining unit employees report directly to non-nuclear maintenance manager Mark Carroll and work in Idaho Falls and at MFC, RTC, and CFA.

3. Staff Functions.

The Staff Functions are overseen by the respective directors of education, training, and research partnerships;¹⁶ technology partnerships;¹⁷ science and technology strategic planning;¹⁸ infrastructure, optimization, integration, and planning;¹⁹ legal,²⁰ and internal audit.²¹ These sub-departments generally consist of 12-24 employees, none of whom are represented or at issue herein.

B. Represented work

1. Nuclear operations maintenance

David Ceci is the nuclear operations maintenance manager. There are five organizations under Ceci's control. They are planning, maintenance scheduling, electrical crafts, mechanical crafts, and the machine shop. Reporting directly to Ceci are Gary DeLong, maintenance manager at RTC, and Ronald Jones, maintenance

¹⁶ Andy Kline is the director of education, training and research partnerships. This is a new organization which will be responsible for developing a center for advanced energy studies. The only individual currently reporting to Kline is Leonard Bond who has been hired to be the director of that center.

¹⁷ Jack Lance is the director of technology partners. He oversees partnerships with private industry and technology transfers of research products to the private sector.

¹⁸ Ralph Bennett is the strategic planner for science and technology.

¹⁹ Carol Johnson is the director of infrastructure. Her responsibilities include developing new facilities in Idaho Falls and at INL to optimize the consolidation of BEA's operations in the three principal areas of science and technology, reactor technologies, and materials and fuels technology.

²⁰ Mark Olsen is the General Counsel and oversees all legal matters.

²¹ Doug Benson is the director of internal auditing.

manger at MFC. Reporting to them are various supervisors and foremen. The electrical craft supervisor is Blane Atkinson. He is responsible for the instrument technicians and electricians working at RTC and MFC. There are 4 represented electricians at MFC, working under the Argonne collective bargaining agreement. There are also 15 unrepresented instrument technicians at MFC. These 19 employees all report to two foremen, who, in turn, report to Atkinson.

There approximately 19 represented electricians and instrument technicians at RTC, working under the Bechtel collective bargaining agreement. These 19 represented employees report to three foremen, who in turn report to Atkinson. While the record gives little detail about the day-to-day duties of these represented and unrepresented electrical employees, it does establish that they are all required by DOE to be certified electricians.

Kevin Pace is the supervisor for mechanical crafts at MFC and RTC. Pace also reports directly to Ceci, the director of nuclear maintenance. There are 2 represented mechanics at MFC covered by the Argonne collective-bargaining agreement and 9 unrepresented mechanical craft employees. These employees all report to the same foremen, who, in turn, report to Pace. The record is silent as to the specific work performed by the 9 unrepresented mechanical craft employees. The 2 represented mechanics perform maintenance on the diesel powered back-up generators.

There are also approximately 35 represented mechanical craft employees at RTC covered by the Bechtel collective bargaining agreement. They are classified as mechanics, pipe fitters, welders, heavy equipment operators, laborers, carpenters, painters, and laborers. The machine shop is also physically located at RTC. The supervisor is Paul Southworth who has 9 represented machinists working for him. Southworth also reports directly to Ceci. These represented machinists are covered by the Bechtel collective bargaining agreement.

The Employer has on two occasions used represented RTC employees at MFC pursuant to memoranda of understandings negotiated with the Union. The first instance involved using represented RTC electricians to work on the MFC gate Argus security system upgrade. At the time of this project, the represented MFC electricians could not be spared from their normal work to perform the upgrade, and the project would otherwise have been subcontracted. The second instance involved using a represented mechanic from RTC to perform work on some diesel generators located on trailers used to transport material from MFC to NASA. The record is silent as to how these employees were supervised when working at the alternate work sites.

Finally, the Employer is in the process of formulating unified work procedures for the former Argonne and Bechtel nuclear maintenance employees and expects to implement them by next summer. Currently, these employees work under the respective Argonne and Bechtel procedures in effect as of February 1, 2005.

2. Nuclear operations

As noted, David Richardson is the director of nuclear operations. Reporting to him are the managers of 11 sub-departments, including ATR programs which is managed by John Dwight. Reporting to Dwight are the manager of ATR/NIMMS ops, Max Haberling, and the manager of ATR operations, Bruce (last name unknown). There are 9 represented utility operators under Haberling's direction, and 19 represented process operators under Bruce's direction. These represented employees all work at RTC and are covered by the Bechtel collective-bargaining agreement.

3. Non-nuclear maintenance

Mark Carroll is the manager of the non-nuclear maintenance services department. The non-nuclear maintenance department is one of many sub-departments within the facilities and site services department. Several of the other sub-departments will be discussed below. The non-nuclear maintenance department includes a maintenance engineering group and a work control group that does planning

and scheduling of non-nuclear maintenance. It also includes about 126 employees working under either the Bechtel or Argonne collective bargaining agreements. The represented employees under Carroll's direction perform maintenance on the non-nuclear facilities at RTC, CFA and MFC, and in Idaho Falls. When BEA assumed operations on February 1, 2005, it kept in place the maintenance procedures in effect through Argonne at MFC, and the "Manuel 6" maintenance procedures which applied to the former Bechtel operations. It currently has a team (including Union representatives) preparing standardized maintenance procedures which will supersede the current procedures.

The group manager over all the bargaining unit non-nuclear maintenance craft employees is Charlene Bain-Poirier who works at CFA. Reporting to Bain-Poirier are foreman/supervisors at MFC, CFA, RTC, and Idaho Falls. Specifically, MFC has a lead supervisor, Jim Clayton, and four foremen who oversee the work of about 34 represented employees who work under the Argonne collective bargaining agreement. Clayton had previously worked at CFA, but was transferred to MFC after BEA assumed operations.

The lead supervisor at CFA is Terry Christiansen. He has 7 foremen working under his direction. The CFA maintenance operation, which was established by BEA using former Bechtel employees from other areas of INL, currently, consists of about 70 represented employees. Finally, there is 1 foreman and about 16 represented employees in Idaho Falls, and 1 foreman and about 6 represented employees at the RTC. These employees all work under the Bechtel collective bargaining agreement.

The non-nuclear maintenance unit employees include the full range of crafts except for sheet metal workers. Thus, there are equipment operators, electricians, plumber/pipe fitters, mechanics, instrument technicians, carpenters, painters, and laborers. If sheet metal workers are needed, they are "borrowed" from the nuclear maintenance department. The custodians are also included in this maintenance

department and work under the direct supervisor of the above managers and supervisors.

Some of these maintenance employees are organized into so-called FIN (fix-it-now) teams. There are FIN teams in Idaho Falls and at RTC, CFA, and MFC. The MFC FIN team was the most recently started and was described as being in its infancy. These FIN teams perform basic maintenance such as fixing toilets, setting up conference rooms, and changing lights. There is also a “deployment team,” which performs larger projects and preventative maintenance on the heating, ventilation, and air conditioning systems, and building infrastructure. This deployment team will also do some fabrication work, as needed, but does not perform new construction.

As of the hearing, the only instance where former Argonne unit maintenance employees have been used at another location was when the parties reached a specific memorandum of understanding to use Bechtel represented laborers at MFC. This occurred as a result of a program implemented by the Employer about three months prior to the hearing called “clean sweep.” The purpose was to eliminate debris, excess material, and excess equipment cluttering offices, laboratories and shop areas. The clean sweep project began in Idaho Falls and is currently being done at MFC. From there, clean sweep will move to RTC. The clean sweep crew consists of eight laborers and two equipment operators. This crew loads up trash, debris and excess equipment and materials and either takes it to the landfill or the excess warehouse located at CFA. The record is silent as to how both of these groups of employees are supervised when transferred to work at facilities other than that to which they are normally assigned. Finally, the record establishes that MFC equipment operators are also cross-trained to assist the fire department and Bureau of Land Management to work on wild fire crews.

4. Site services

The facilities and site services department also consists of the site services sub-department. The manager of the site services sub-department is Norman “Kip” Winter.

Site services consists of utility services department and the roads, grounds and bus services department. The former Bechtel collective bargaining agreement covers approximately 5 utility operators, 9 linemen, and 4 power dispatchers in the utilities services department. The roads, grounds and bus services department consists of approximately 90 bus drivers, who are represented by Amalgamated Transit Union, and 6 vehicle maintenance employees, who are covered by the former Bechtel collective bargaining agreement.

5. Materials fuels complex

The facilities and site services department also consists of the materials fuels complex sub-department. The manager of this sub-department is Darrell Pfannenstiel. Reporting to Pfannenstiel are 4 Union represented operations specialists and 6 represented maintenance specialists who work at the MFC. The record is silent as to the duties and responsibilities of these employees.

6. Environmental safety, health and quality department

The environmental safety, health and quality department consists of 6 sub-departments including occupational medicine and radiologic control. The manager of occupational medicine is Paul Creighton. Reporting to him are 11 nurses and 1 x-ray technician. These employees work at CFA in the dispensary.

The manager of radiologic control is Laurence Auman. He also held this position for Bechtel, prior to BEA assuming operations. Under Bechtel, radiologic control included about 225 employees, and Argonne had a separate radiologic control department. BEA combined those two departments which were significantly reduced after BEA assumed operations. There currently are 85 total employees in radiologic control, of which about 24 are represented by the Union. There are no represented radiologic control employees at MFC, although about 23 unrepresented RADCON technicians at MFC perform work similar to the 20 represented RADCON technicians working at RTC, 3 working at CFA, and 1 working in Idaho Falls.

7. Business management

The director of business management is Brian Sack. Reporting to Sack are the managers of information technologies, financial operations, supply chain management, and prime contract management. Contained within the information technologies department are nine sub-departments including computer support and solutions. The 3 represented telephone operators who work in Idaho Falls are in the computer support and solutions department which reports to the Brent Stacey, the manager of information technologies. The record is silent as to the duties of the telephone operators.

Contained within the supply chain management department, managed by Philip Simonds, is the property management department, managed by Philip Sanders. Reporting to Sanders are 2 material controllers, 3 material handlers, and 1 material helper. These 6 employees work at MFC and are covered by the former Argonne collective bargaining agreement.

BARGAINING HISTORY PRECEDING FILING OF THE UNIT CLARIFICATION PETITION

Shortly after BEA assumed operations in February, labor relations representatives for the Employer began discussing the Employer's desire to combine all the represented employees into one unit with the designated Union representatives for the Argonne and Bechtel units. The Employer did not request specific meetings on this subject, but would raise the issue whenever the parties were meeting on other representational matters.²² During these various discussions, the Employer told the Union representatives that in the interest of getting a merger accomplished, the Union could pick the best provisions from both collective-bargaining agreements. The Union

²² The Employer was simultaneously having discussions with representatives of the former Argonne and Bechtel guard units, which were represented by separate labor organizations. Those parties reached agreement to consolidate the Argonne guard unit with the Bechtel guard unit during this same time period.

representatives repeatedly told the Employer they were looking into merging the contracts, but did not report any progress.

The Employer formally raised the issue on June 8, 2005, when the parties met to discuss the wage re-opener request made by the Union pursuant to the terms of the adopted Argonne collective-bargaining agreement. At the start of that meeting, the Employer informed the Union that the informal discussions on this issue would be allowed to go forward, but the Employer was considering, and was reserving the right to file, a unit clarification petition with the NLRB. The Union responded that it had been having informal discussions with Employer officials as well as within the Union and in the near future, the Union would be ready to discuss it with the Employer.

Ultimately, the Union rejected the Employer's request to merge the units and the Employer filed the instant UC Petition on July 20, 2005.

LEGAL ANALYSIS AND CONCLUSIONS

A. Positions of the parties

The Employer contends that it is appropriate for the Board to direct the inclusion of the former Argonne represented employees (approximately 57) into the larger group of former Bechtel employees (approximately 254). In support of its position, the Employer relies on the line of accretion cases referred to as "consolidation cases" involving the actual integration of formerly-separate operations where the units were represented by competing unions or where one unit was represented and the other was unrepresented. See e.g., Boston Gas Company, 221 NLRB 628 (1975). These "consolidation cases" generally hold that a change in an employer's operation

constitutes a sufficient change in circumstances to warrant processing a representation petition. See, e.g., Rock-Tenn Co., 274 NLRB 772 (1985).

The Employer herein seeks to have the Board order combining the historical bargaining units to create one “appropriate unit,” rather than risk labor disharmony by completing the integration of operations it has begun at the managerial and administrative level, but not carried out at the statutory employee level. As stated at pages 4 and 5 of the Employer’s post-hearing brief: “When it was clear the internal Union differences could not be resolved, BEA filed a UC Petition requesting the Board for the right to treat this as a single bargaining unit. . . . BEA brought this UC Petition before the Board in order to seek the Board’s assistance in facilitating a peaceable integration of the two bargaining units at issue. The integration of the two . . . units will allow BEA to provide services at this critical nuclear site in a safer and more efficient manner.” In short, the Employer argues that accretion principles should apply where an employer merges or intends to merge existing but separate collective-bargaining units into a single integrated operation.

The Union contends that the UC petition should be dismissed based on the Board’s line of accretion cases involving determinations as to whether there are “compelling circumstances” to overcome the significance of bargaining history when an employer merges prior separate companies or internally reorganizes its own operations. See, e.g., Rock-Tenn Co., 274 NLRB 772 (1985).²³

²³ The Union, citing Union Electric Company, 217 NLRB 666, 667 (1975), also contends that the instant UC petition should be dismissed because this matter does not involve “newly established classifications” or “recent substantial changes in duties and responsibilities of the employees.” Citing Edison Sault Electric Co., 313 NLRB 753 (1994) and Wallace-Murray Corp., 192 NLRB 1090 (1971), the Union further argues that the UC petition should be dismissed, because it was filed during the term of the collective-bargaining agreements and the Employer failed to reserve its right to file a UC petition during the course of bargaining. I find it unnecessary to address these additional arguments because the Employer did not

B. Framing the issues

The focus of my analysis will be on (1) whether clarifying the former units into a single bargaining unit is appropriate because of the existence of a “new operation” as urged by the Employer; and (2) whether, the Employer has met its burden of establishing that there are “compelling circumstances” to disturb the historical units.

In determining whether employees share a sufficient community of interest and have no separate group identity, the Board examines such factors as the integration of operations, centralization of management and administrative control, geographic proximity, similarity of working conditions, common control of labor relations, collective-bargaining history, day-to-day supervision, and interchange of employees. Although the Board generally weighs a variety of community of interest factors in deciding unit clarification proceedings, it grants greater weight to common day-to-day supervision and employee interchange. See, Gitano Group, supra, citing Towne Ford Sales, 270 NLRB 311 (1984), affirmed, 759 F.2d 1477 (9th Cir. 1985).

Although the Board’s unit clarification proceedings are most frequently used to clarify unit placement of specific employees, they have also been used to clarify unit scope issues to determine whether previously separate units have by the parties’ actions been merged into a single appropriate unit or divided into two or more appropriate units. Such unit clarification proceedings require an analysis of whether the unit, if clarified, would constitute an appropriate unit under general unit determination

base its UC petition on such factors. Thus, while it is clear that the instant matter does not involve newly created positions or job classifications that have undergone recent, substantial changes, that does not end the discussion. The question is whether the UC petition is proper based on changed business operations resulting in an integration of the previous bargaining units to such a degree as to require their consolidation.

principles. See, e.g., Armco Steel Company, 312 NLRB 257 (1993), and Rock-Tenn Co., 274 NLRB 772 (1985). In this regard, the Board will not find a unit appropriate if it does not comport with any of an employer's administrative, divisional, or regional groupings, or constitute a coherent geographic or craft grouping. See, Laboratory Corporation of America Holdings, 341 NLRB No. 140 (2004), and the cases cited therein. See also, Rock-Tenn, supra.

1. Consolidation line of cases relied upon by the Employer

The Employer relies on various consolidation cases in support of its request for unit clarification. While these cases have some applicability, I find that none of them is directly on point because of the unusual situation here where the Employer is seeking to combine bargaining units represented by the same Union. The cases cited by the Employer are also distinguishable from the matter now under consideration in that they involve situations where the employers had completed or essentially completed actual integration at the bargaining unit level, unlike the present matter where the Employer is seeking "permission" to integrate the unit work.

In Boston Gas Company, 221 NLRB 628 (1975), the employer had purchased two separate companies whose employees had been represented by different unions and merged them into one integrated unit, at the location of one of the former companies. "Thus, we have a situation in which employees historically represented by different labor organizations have been merged into a single work force in which they work side by side in similar job classifications performing like functions under common supervision." *Id.* at 629. The Board found: "Since there is no basis on which the employees who are members of the separate (units) could be deemed to be appropriate

separate units, all the customer inquiry employees in the center appropriately belong in the same unit.” Id. In the face of competing claims from two different unions, and the fact that neither group of affected employees was sufficiently predominant to constitute an accretion, the Board determined that a question concerning representation existed.

In Boston Gas Company, 235 NLRB 1354 (1978),²⁴ the Board found that the employer’s subsequent merger of customer-related activities at one location did not create a new operation, but rather constituted a physical move, combined with the introduction of more advance equipment. Accordingly, the Board determined accretion analysis was the proper method of resolving the conflicting representation claims of the two competing unions, and found that since one of those unions represented almost 70% of the clarified unit employees, it was sufficiently dominant so that a representation election was not warranted.

In Martin Marietta Chemicals, 270 NLRB 821 (1984), the employer purchased an adjacent lime plant and quarry represented by the Cement Masons Union, and integrated it with its existing lime plant and quarry represented by Steelworkers. After acquisition, the quarries were merged by blasting, and a ramp was constructed for free access of employees and equipment. The employer hired the former Cement Mason unit employees, dovetailed the seniority lists, allowing for bumping between the two former units, and began interchanging the two groups of employees on a daily basis. The Board found that the employer had created a “new operation” by physically and administratively merging the two operations, including centralization of labor relations, common management, and interchange of employees. “These changed circumstances

²⁴ These two cases are generally referred to as Boston Gas I, and Boston Gas II, because they involve two separate consolidations of operations involving the same employer and employees.

obliterated the previous separate identities of the two units which existed when each group worked for a different employer at two distinct facilities.” Thus, the Board found the sole appropriate unit was one overall production and maintenance unit. Because neither group of employees was sufficiently dominant, the Board, citing Massachusetts Electric Co., 248 NLRB 155 (1980), found that a question concerning representation had been raised and that the contracts did not bar an election. Accordingly, the employer’s UC petition was dismissed and an election was directed in the RM case.

The final consolidation case discussed by the Employer is Borden, Inc., 308 NLRB 113 (1992), which actually did involve consolidation of separate units represented by the same union. In Borden the employer purchased and, over a period of one year, consolidated the former Meadow Gold and Farmer Jack operations at the Farmer Jack plant. Both units were represented by the same union and had collective-bargaining agreements in effect at the time of the consolidation. The Board found that a single, appropriate new unit was created by the consolidation, but that the employer violated Section (8)(a)(5) and (1) when it applied the terms of the Farmer Jack collective bargaining agreement to the Meadow Gold employees without bargaining in good faith to reach an agreement or to impasse. Borden is distinguishable from the instant matter in that an actual consolidation of operations had occurred.

2. “Compelling circumstances” cases relied upon by the Union

The Union contends that the Employer has failed to meet its heavy burden of establishing that the prior bargaining history has been overcome by the changed circumstances following its assumption of operations, because the Employer has not fully developed and implemented its reorganization plans and has allowed the Argonne

and Bechtel represented employees to continue to work independently. As noted by the Union, “compelling circumstances” have been argued as a basis for upsetting prior bargaining history in a number of widely cited accretion cases, including Rock-Tenn Co., 274 NLRB 772 (1986)(Board clarified an historical two-plant unit into separate units following the sale of the separate units); Gitano Group, Inc., 308 NLRB 1172 (1992)(Board established a presumption that a transfer of a portion of a represented unit to a new facility created a separate unit); Ready Mix USA, Inc., 340 NLRB No. 107 (2003)(Board found successor employer failed to show that changes in operation of the newly acquired facilities made representation of block plant and batch plant employees in a single unit no longer appropriate); and AC Management, Inc., d/b/a Mayfield Holiday Inn, 335 NLRB 38 (2001)(Board affirmed ALJ’s separation of prior multilocation unit into two separate units following the sale of the two hotels to separate entities). I find this line of cases to be instructive in that the matter now under consideration lacks the “compelling circumstances” needed to require unit clarification.

C Analysis and conclusions

Based on the foregoing, and the record as a whole, I find that it is inappropriate to combine through accretion the former Argonne represented employees with the former Bechtel represented employees because, as conceded by the Employer, it has not yet functionally integrated the actual work of the former Argonne and Bechtel represented employees. In reaching my conclusions, I am mindful that when BEA assumed operations under the DOE contract on February 1, 2005, it arguably commenced a “new operation” under the authority cited by the Employer. However, as noted above, the consolidation cases relied upon by the Employer involve situations

where the employer had actually merged the prior separate operations. The burden of establishing that unit clarification is warranted is on the party seeking the clarification, and that the Board will not lightly disturb historical bargaining units. In this regard, the Board in **U.S. Tsubaki, Inc.**, 331 NLRB 327 (2000), citing **Armco Steel, Co.**, 312 NLRB 257 (1993), stated:

Unit Clarification is appropriate for resolving, inter alia, ambiguities concerning the unit placement of employees in historical bargaining units following a reorganization of an employer's operations. In "compelling circumstances," the Board will clarify an historical unit into two units where the historical unit is no longer appropriate because of recent significant changes. Where the changes are not recent or significant, the Board will not disturb the parties' collective-bargaining history.

Similarly, in **Mayfield Holiday Inn**, supra, 335 NLRB 38, the Board stated:

Regarding the appropriateness of historical units, the Board's longstanding policy is that "mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness. . . . The party challenging an historical unit bears the burden of showing that the unit is no longer appropriate. The evidentiary burden is a heavy one. [Citations omitted.]"²⁵

I find that the Employer has failed to meet its burden. Thus, in the absence of an actual merger or consolidation of operations at the bargaining unit level, it is premature to determine whether the combined unit proposed by the Employer would share the requisite community of interests required in order to clarify the bargaining unit. Specifically, while BEA has centralized management and administrative functions, has common control of labor relations, and is in the process of unifying all safety, process, and production procedures, until the Employer actually integrates the work functions of the represented employees, it cannot be established that these employees share

common day-to-day supervision, or that there is sufficient interchange of employees to warrant a finding that the Employer has “obliterated the previous separate identities” of the historical units. See, Martin Marietta Chemicals.

As a further basis for dismissing the unit clarification filed in this matter, I find that it is also premature to determine whether the bargaining unit as proposed by the Employer would be appropriate even had the Employer fully integrated the work of the employees in the two existing bargaining units in the manner proposed. In that regard, the evidence establishes that, notwithstanding the Employer’s proposed unit description, which purports to include “all” employees in the named classifications, the Employer actually seeks a new bargaining unit comprised of only the employees in those classifications who were represented under the former Bechtel and Argonne bargaining agreements. The appropriateness of such a unit is far from certain where the unit would exclude certain operators, maintenance employees, and RADCON technicians who were historically unrepresented under Argonne’s operations and who would appear to share a community of interest with certain of the represented employees even if the Employer merges the operations in a manner as set forth in the limited record before me.²⁶ Specifically, the proposed combined unit would include only 4 of 19 employees working under common supervision in the nuclear maintenance electrical crafts department at MFC, with the 19 electrical craft employees working at CFA and RTC. Similarly, the unit as proposed by the Employer would include only 2 of

²⁵ This quote appears at page 13 of the Union’s brief, but the Union failed to cite to the authority from which the quote was taken. It would appear that it is from the Mayflower Holiday Inn case.

²⁶ Since the Employer did not seek to include these historically unrepresented classifications of employees, the issue of including them in the unit was not fully litigated. Nevertheless, certain of the maintenance employees appear at a minimum to share common supervision at all levels including the lowest level, under the proposed merger of operations.

11 mechanical craft employees working under common supervision at MFC, with approximately 34 mechanical craft employees at CFA and RTC. Also, the combined unit as proposed would also include approximately 24 RADCON represented technicians working CFA, RTC and in Idaho Falls, but would not include about 23 RADCON technicians working at MFC.

In summary, I find unit clarification unwarranted in this matter because there has been no actual integration or merger of operations at the bargaining unit level. There is no record evidence to show that the Employer could not continue to perform its contractual obligations with the United States Department of Energy with the separate collective bargaining relationships in place since February 1, 2005. Thus, there are no compelling circumstances requiring clarification of the two appropriate bargaining units into a single bargaining unit. Further, until actual integration occurs, it is premature to determine whether the proposed unit, which does not appear to include all employees working in the same classifications under common supervision performing identical work, would constitute an appropriate bargaining unit.

Accordingly, I shall order that the Petitioner's unit clarification petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations

Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.
20570. This request must be received by the Board in Washington by **December 9, 2005**.

DATED at Denver, Colorado this 25th day of November, 2005.

/s/ B. Allan Benson
B. Allan Benson, Regional Director
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